

No. 9(1)82-6Lab.329.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s The Karnal Co-op. Sugar Mills Ltd., Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

References No. 164, 165, 156 and 163 all of 1979

between

S/SHRI JAI CHAND, KANWAR SINGH, RAM SINGH AND JAI SINGH DAHIYA, WORKMEN AND MANAGEMENT OF M/S THE KARNAL CO-OP. SUGAR MILLS LTD., KARNAL

Present :

Shri Madho Chander Vats, for the applicants.

Shri Surinder Kaushal, for the management.

AWARD

These references have been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/KNL/19-78/36780, dated 24th August, 1979, ID/KNL/19-78/36786, dated 24th August, 1979, ID/KNL/19-78/36792, dated 24th August, 1979 and ID/KNL/19-78/36774, dated 24th August, 1979 under sub-section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between S/Shri Jai Singh, Kanwar Singh, Ram Singh and Jai Singh Dahiya and the management of M/s The Karnal Co-op. Sugar Mills, Karnal. The term of the references was :—

Whether the termination of services of the workmen were justified and in order ? If not, to what relief are they entitled ?

On the receipt of the orders of references notices as usual were sent to the parties. The parties appeared, filed their respective pleadings. The following issues were framed on the basis of the pleas of the parties in references No. 154, 155, 156 and 163 all of 1979 which were consolidated,—*vide* my order, dated 5th March, 1980 and the evidence and further proceedings were recorded in file No. 154 of 1979 to be read in all other cases:—

- (1) Whether the reference is bad as per reasons given in the written statement ?
- (2) Whether the applicant is a workman under I.D. Act ?
- (3) As per references ?

Issue Nos. 1 and 2 were to be treated preliminary and decided first,—*vide* order, dated 2nd May, 1980. The evidence of the parties was recorded in file of reference No. 154 of 1979. The applicants appeared their own witnesses and closed their cases. The management examined Shri B.S. Bhatia, Assistant Accounts Officer as their only witness and closed their case. I heard the learned representatives who also filed written arguments on issue Nos. 1 and 2. I have perused the evidence oral as well as documentary on the record carefully and decide the issues as under :—

Issue No. 1.—The management raised legal objection that as the government once rejected the demand notice,—*vide* letters No. ID/KNL/19-78/34433-35, dated 21st July, 1978 subsequent reference of the same dispute for adjudication is bad in law. It is, a well settled law at present that the power of government for referring the dispute for adjudication to the Labour Court is not exhausted when once it decided to reject the demand. Rather the Government shall be deemed to have not exercised its discretion in that case if the Government can *suo moto* make a subsequent reference even when no notice to the parties concerned is necessary. But on an application of the workman to the Government to reconsider its previous decision the opposite party must be given an opportunity of hearing. In the case in hand the management representative has admitted that he filed the written comments on behalf of management before the Government. I am therefore of the view that the present references is valid one and the Government was competent to make the same. The management was afforded full opportunity and after consideration of the view points of both the parties the dispute was referred for adjudication. The other objection raised by the management that the respondent is a society registered under the Punjab Co-op. Societies Act which is in itself a complete code and section 56 of this Act provides the remedy and hence I.D. Act was not applicable to the respondent mills, has been decided by me,—*vide* my order, dated 1st September, 1980. The citations given by the parties need not be discussed as the law is settled and there are numerous decisions in support of the above citation. I accordingly decide this issue against the management.

Issue No 2.—Section 2(s) of the I.D. Act defines workman as under :—

"Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Army Act, 1960, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934 ; or
- (ii) who is employed in the Police service or as an officer or other employee of a prison ; or
- (iii) who is employed mainly in managerial or administrative capacity ; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly or a managerial nature".

The applicant Jai Chand denied that the duties allotted to him were enumerated in Mark 'A.' He used to maintain day book purchase and receipt record by his own hand. His work was supervised by the Deputy Cane Superintendent and he Cane Manager. He admitted in his cross-examination that he was getting supervisory grade. He used to point out the discrepancies committed by Assistant Cane Accountant to the Cane Manager. He denied that he had powers to transfer the staff and recommended leave as departmental head of staff working with him. He admitted his signatures on leave applications Ex. WW-1/1 to WW-1/5, Ex. WW-1/6 to Ex. WW-1/20 also bore his signatures which are letters of transfer and postings of the Cane Accounts staff but he volunteered that the transfers were made as per directions of the Managing Director. The applicant was confronted with the cane accounts season register and it was found that there was one entry per day on that register. He has further stated that he used to prepare the summary sheet after checking the weighment sheets. He admitted that there were three four persons, who prepared the summary sheet and then said he used to check the same. The summary sheet has been exhibited as WW-1/21 consisting of 46 pages. He denied that he was doing any supervisory work and he was not doing any work with his own hand. He also denied that he was the departmental head of the cane department.

Shri Kanwar Singh who appeared as WW-2 has deposed that he joined as Labour Officer. His duties included distribution of sugar to the workers, collection of quotations, issuing of library books and sports material to the workers and any other work assigned to him by the Sugar Sales Manager under whom he worked,—*vide* letter Ex. WW-2/1. He denied as incorrect that Shri Babu Ram and Hawa Singh used to work under him and he used to sign their leave applications as departmental head. He admitted his signatures on Ex. WW-2/2 at mark 'A' and on Ex. WW-2/3 and WW-2/4 at marks B and C, respectively. He further admitted that he used to appear before the Labour Inspector and Labour Officer on behalf of the management and participated in the shop council of the mills from the side of the management.

Shri Ram Singh who appeared as WW-3 has deposed that he was initially appointed as time clerk and was promoted as Head Time Keeper on 16th December, 1976 and worked in that capacity till his termination. Even after his promotion his duties remained the same that of clerk of maintaining attendance register, leave register and pay register. He denied as wrong that any time keeper was working under him though there were three other time keepers. As head time keeper his grade was supervisory 'B' and was getting Rs. 534 per month including house rent. He admitted his signatures on WW-3/1 to WW-3/4 which are leave applications. He further stated that he used to prepare salary bills along with other three time keepers. He also stated that the attendance register for the month of July, 1977 was prepared in his hand as well as the hands of time keepers. His handwriting was on one page Ex. WW-3/5 and there was no other entry in the register on any other page. There was no other staff in the time office except the token boys and three time keepers. He denied the suggestion that he was supervising the work of the time keeper and the other staff in the time office.

Shri Jai Singh who appeared as WW-4 has deposed that he was working as Store Officer at the time of his termination. His duties were receiving store materials, writing day book, weighing the material. There were other clerks in the store office who maintained issue ledger, posted material issued from the store, and the third one was incharge of posting entries of the material issued from the godown. He further stated that he used to maintain ledger for receipt of all the material. He denied as incorrect that the three store keepers used to work under him rather he used to receive instructions from the Managing Director before assigning duties to the staff. The applicant stated that the three store keepers work under the Assistant Store Officer. He used to verify the quantities received by him in the store. He admitted that he was getting Rs. 530 per month. He also admitted that he used to verify the bills as store officer after its verifications from others. The bills were daily received which were Ex. WW-4/1 to WW-4/3 and his signatures were on these bills. He admitted as correct that he was the head of the store department and he used to recommend leave applications. Ex. WW-4/4 and WW 4/5

bore his signatures. He again said that the three storekeepers were not working under him but under the Assistant Store Officer who worked under him.

Shri B.S. Bhatia who appeared as MW-1 has deposed that Shri Jai Chand, Cane Accountant was drawing more than Rs. 500 and above 30 to 35 persons worked under his supervision. He used to recommend leave issued transfer orders. He was in the supervisory grade. Shri Jai Singh Dahiya was drawing Rs. 676.68 paisa as his monthly salary. He used to recommend leave of the staff working under him which was 8 to 10 in number. The management witness produced duty list issued on 3rd September, 1977 which was objected to on ground of late production by the applicants representative but the objection has no force as the record of the respondent is not likely to be manipulated afterwards only to defend the case of the management. The letter so produced were marked Mx. MW-1/2 to MW-1/4. Similar statements were made by the management witness in respect of the applicant Shri Kanwar Singh and Shri Ram Singh. The management witness denied the suggestion put to him that the Cane Manager or Deputy Cane Manager used to supervise the work of Shri Jai Chand. The Cane Accountant Shri Jai Chand could not dismiss, suspend, fine any employee of the mills nor he could take any independent decision. He could only recommend leave. The above has been admitted by the management witness to a suggestion put to him during cross-examination and this was his reply in respect of other three applicants also.

From the oral evidence as well as the documentary evidence produced by the parties it is clear that the concerned applicants were employed in the supervisory grades getting more than Rs. 500 as their monthly salary. The applicants have not been able to establish that they had been doing clerical work or manual or technical work. They have been doing the supervisory work and it has also been established that they were getting more than Rs. 500 as their wages which bring them under the exception given in sub-clause 4 of the section 2(s) of the I.D. Act. The mere denial by the applicant, that they were not empowered to appoint or dismiss or take any disciplinary action against any of the employees does not oust them from exception given in sub-clause 3 of section 2(s) but this is not sufficient to oust them from the exception as given in sub-clause 4 of the aforesaid section. The applicants had not been able to establish that their duties fall in any of the four kinds of duties which are necessary to make them a workman if they are employed to do manual, skilled, unskilled, clerical, technical or supervisory. They were not performing any manual, clerical or technical work and they were only employed to do supervisory work but at the same time they were getting more than Rs. 500. and as such all of them come under the exception. The arguments put forth by the applicants representative that mere signing and tallying the bills and having little control over the workers even though they may be drawing more than 500 rupees wages does not oust the applicants from the definition given in section 2(s) to be called as workman. He has cited 1969 II LLJ page 670, 1966 II LLJ page 194, 1970 I LLJ page 58 Supreme Court in support of his contention that only a person mainly appointed in a managerial capacity was to be excluded from the definition of workman. The facts of the cases in hand are different to those cases cited above. In the present case the applicants have failed to establish that they had been doing mainly the clerical work and the supervisory or managerial functions were only incidental to their main duties while in the cases cited above the main duties were proved to be clerical in nature. The main duties of the applicants are supervisory and managerial in nature while some clerical work if at all can be said to be done by them is only incidental. Disagreeing with the contention of the applicants representative I hold that the applicants are not covered by the term workman as given in section 2(s) of the I.D. Act. The issue is accordingly decided.

Issue No. 3.—As a result of my findings on issue No. 2 the applicants are not competent to raise the dispute under section 2(A) of the I.D. Act which has led to these references. The references are therefore bad in law. The applicants are not entitled to any relief. The references are answered and returned accordingly. Copy of this award be placed on each of the other reference files.

The 31st December, 1981

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 7, dated the 4th January, 1982.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.